

Boyd



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Junger Utility and Paving Co.

File: B-223557

Date: July 15, 1986

DIGEST

1. Small Business Administration is empowered to conclusively determine matters of size status for federal procurements and the General Accounting Office will neither make nor review such determinations.
2. Except in instances where an award is made to protect the public interest, the contracting officer shall not award the contract until the Small Business Administration has made a size determination or 10 business days have expired, whichever occurs first.

DECISION

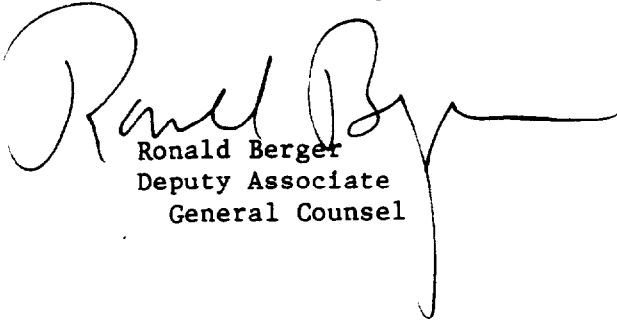
Junger Utility and Paving Co. protests the award of contract No. F08651-86-C-0203 to Okaloosa Asphalt Enterprises Inc. Junger contends that the award is improper since Okaloosa is a large business and does not qualify for award under this solicitation, which is set aside for small business.

Under 15 U.S.C. § 637(b)(6) (1982), the Small Business Administration (SBA) is empowered to conclusively determine matters of size status for federal procurement purposes. Therefore, this Office will neither make nor review size status determinations. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(2) (1986); NJCT Corp., B-216919, Jan. 11, 1985, 85-1 CPD ¶ 33.

Regarding the protester's concern that award will be made before this size issue is resolved, if a size status protest is filed with the contracting officer and referred to the SBA, see Federal Acquisition Regulation, 48 C.F.R. § 19.302 (1985), under the regulations the contracting officer shall not award the contract until the SBA has made a size determination or 10 business days have expired since SBA's receipt of the protest, whichever occurs first. The award need not be withheld if the contracting officer determines, in writing, that an award must be made to protect the public interest. 48 C.F.R. § 19.302(h)(1).

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We dismiss the protest.



Ronald Berger
Deputy Associate
General Counsel